

Agreement No. 7824-17-PO

### **MEMORANDUM OF UNDERSTANDING**

This non-binding memorandum of understanding ("MOU") is made by and between, TASER International Inc., located at 17800 North 85<sup>th</sup> Street, Scottsdale, AZ 85255 ("TASER"), and the City of Oxnard and administered by the Oxnard Police Department, located at 251 South "C" Street, Oxnard, California 93030 ("Oxnard PD"). TASER and Oxnard PD hereinafter will be referred to individually as "**Party**" and collectively as "**Parties**".

**WHEREAS**, TASER is in the business of providing integrated hardware and software solutions to law enforcement agencies that allows them to create, retain, manage, and share digital data. Currently, TASER is in the process of developing a record management system to serve as a platform for its customers to collect, store and access critical information gathered during the course of an incident or investigation, hereinafter referred to as the "**Software**".

**WHEREAS**, Oxnard PD wishes to assist TASER in the development and evaluation of the Software.

**NOW THEREFORE, the Parties agree as follows:**

#### **I. Purpose.**

The purpose of this MOU is to memorialize the Parties' intent to cooperate in the development and evaluation of the Software and is not intended to create a binding agreement. The Parties desire to more formally define their business relationship and to that end agree to mutually work toward a deeper understanding of how the Parties can work together. This MOU is not all-inclusive and does not constitute an offer or an agreement to enter into a proposed agreement or transaction. Therefore, nothing in this MOU is intended to or will be construed as a binding agreement regarding a potential agreement or transaction.

In joint consultation, TASER and Oxnard PD will work to further define the desired outcomes, timelines, deliverables, and operating model and resourcing. Any agreement reached between the parties must be reflected in a final definitive agreement that will be executed by both parties.

#### **II. Intellectual Property and Ownership.**

Except as otherwise outline herein, by virtue of this MOU, neither Party will gain any Intellectual Property rights owned by the other. All copyrights, patents, trade secrets, trademarks, or any other intellectual property ("Intellectual Property") owned by one Party prior to the date of this MOU will continue to be owned by that Party ("Prior Independent Intellectual Property rights"). Any Intellectual Property created by one Party without the use of the Intellectual Property or confidential information of the other Party shall be and remain the sole and exclusive property of the first Party.

If the Parties decide to engage in joint development activities, TASER will retain the ownership and license rights (if any) of any Intellectual Property that may be created. In other words, TASER reserves and retains all right, title and interest in and to the Software and any associated materials, including any feedback, suggestions or modifications, derived from Oxnard PD's evaluation.

Oxnard PD has, reserves and retains all right, title and interest in and to its usage data and Oxnard PD's other confidential information, including the sole and exclusive ownership of all Intellectual Property rights relating thereto.

### **III. Disclaimer of Warranties; Limitation on Liability.**

Except as may be set forth in any separate written definitive agreement(s) binding on the Parties, (a) all materials, information, or other items provided by one Party to the other are provided "as is" without warranty of any kind, and **each Party disclaims all warranties, express or implied, with respect to any materials, information, or other items provided to the other in connection with this MOU;** and (b) in no event will either Party be liable to the other for any direct, consequential, indirect, special, punitive or other damages arising out of or related to this MOU, except with respect to violation of its confidentiality obligations or the other Party's intellectual property rights.

### **IV. Confidentiality.**

Information exchanged between the Parties shall be subject to non-disclosure terms set forth in the Mutual Nondisclosure Agreement between the Parties attached hereto as Exhibit A and incorporate herein by reference. Neither Party shall issue any public release or advertising regarding its participation in this MOU without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

### **V. Costs.**

Nothing contained in this MOU is to be construed as providing for the sharing of profits, losses, expenses, debts or liabilities arising out of the efforts of either or both of the Parties. Except as explicitly set forth elsewhere herein, each Party shall be responsible for all of its own costs incurred in the performance hereunder.

### **VI. Relationship of the Parties.**

This MOU shall not be deemed to create a joint venture or partnership between the Parties or any other form of legal association which would impose liability upon one Party for the act or failure to act of the other Party, or to obligate the Parties to enter into a joint venture, partnership or other such legal association. This MOU shall not be deemed to create an agency relationship between the Parties or otherwise to make one Party the legal representative of the other Party.

### **VII. Non-Exclusivity.**

Nothing within this MOU requires the Parties to work exclusively with one another on any project or opportunity or to commit to any future agreement. Nothing contained herein shall act in any way as a restriction on the business activities, which either Party may pursue. Neither Party will be precluded from entering into similar agreements with third parties.

### **VIII. Evaluation Term and Termination.**

This MOU shall be effective from the date specified below and will terminate on the date that the first of any of the following events occur: (a) one year from the Effective Date of this MOU; (b) upon thirty (30) days written notice by either Party; or (c) execution of a binding definitive agreement between the Parties. This MOU may be renewed with the mutual written agreement of the Parties for such further period as mutually agreed. This MOU may not be renewed to extend the total term beyond three years.

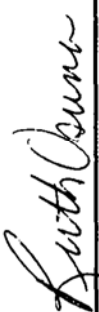
**IX. Assignment.**

Neither Party may assign or transfer any of its rights, duties, or responsibilities in and to this MOU, or any interest arising from this MOU without the prior written consent of the other Party.

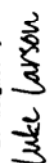
**IN WITNESS WHEREOF, the Parties hereto have executed this MOU by persons duly authorized as of the effective date.**

**ACCEPTED AND AGREED:**

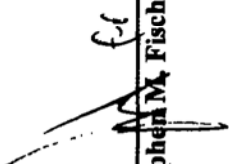
**CITY OF OXNARD**

  
\_\_\_\_\_  
Greg Nyhoff, City Manager  
4-12-17  
\_\_\_\_\_  
Date


**TASER International, Inc.**

DocuSigned by:  
  
\_\_\_\_\_  
39087DEA3B3C42D  
Luke Larson, President  
3/28/2017  
\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephen M. Fischer, City Attorney

**TASER International, Inc.**

  
\_\_\_\_\_  
Douglas Kline, Executive Vice President,  
General Counsel and Corporate Secretary  
3.28.17  
\_\_\_\_\_  
Date

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Scott Whitney, Chief of Police

**APPROVED AS TO INSURANCE:**

  
\_\_\_\_\_  
Mike More, Risk Manager



**Exhibit A**  
**Mutual Nondisclosure Agreement**

This Mutual Nondisclosure Agreement (NDA) is made by and between TASER International, Inc., a Delaware corporation having its principal offices at 17800 North 85<sup>th</sup> Street, Scottsdale, Arizona 85255 (TASER), and City of Oxnard and administered by the Oxnard Police Department, located at 251 South "C" Street, Oxnard, California 93030 (Company). This NDA is effective as of March 28, 2017 and governs all disclosures of the subject matter described in this NDA and made since that date. In consideration of the promises and covenants of this NDA, the parties agree as follows:

1. In connection with the non-binding Memorandum of Understanding between Oxnard PD and TASER (the "Purpose"), the receiving party desires to receive from the disclosing party certain information that the disclosing party regards as proprietary and confidential, including any third party confidential and proprietary information rightfully in the possession of the disclosing party.

2. The term "Confidential Information" means any and all proprietary information that is disclosed by a disclosing party to a receiving party. Confidential Information may include, without limitation: (a) matters of a technical nature such as materials, models, devices, products, trade secret processes, techniques, data, formulas, inventions (whether or not patentable), specifications and characteristics of products planned or being developed; (b) research subjects, methods and results; (c) matters of a business nature such as information about costs, margins, pricing policies, markets, sales, suppliers, customers, product plans and marketing plans or strategies; (d) recorded communication; or (e) other information of a similar nature that is not generally disclosed to the public. All such information is confidential, proprietary, and valuable trade secret information of the disclosing party. Confidential Information may be furnished in any tangible or intangible form, including but not limited to writings, drawings, computer tapes and other electronic media, samples and verbal communications. Any Confidential Information furnished in tangible form must be conspicuously marked as Confidential or Proprietary. It is incumbent on the disclosing party to document and submit to the receiving party, in writing, any Confidential Information disclosed through verbal communication within 30 days of the verbal communication. The receiving party agrees to treat any such information the same as Confidential Information furnished in tangible form.

3. The parties agree not to disclose or use Confidential Information for any purpose other than the Purpose or the evaluation of a possible business or vendor relationship or any subsequent business relationship, and no other use is authorized under this NDA. The disclosing party makes no warranty as to the accuracy of any Confidential Information. All Confidential Information disclosed is provided "as is." All Confidential Information disclosed under this NDA is and remains the property of the disclosing party. No license, right, or authorization to use other than for the purpose above, express or implied, is conveyed or granted to the receiving party for any invention, patent application, patent, copyright, know-how, trade secret, other intellectual property right, or application therefore. The disclosing party makes no representation that any type of business relation related to the purpose of this NDA, the Confidential Information, or any other matter will be concluded between the parties. Nothing in this NDA will be construed as obligating a party to disclose any particular information nor relieve a party of any disclosure obligations required under the California Public Records Act.

4. Receiving party agrees to (a) protect and safeguard the confidentiality of all such Confidential Information with at least the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination, or publication of the Confidential Information, as the receiving party uses to protect its own confidential or proprietary information of a like nature; (b) not use the Confidential Information in any manner to disclosing party's detriment, including without limitation, to reverse engineer, disassemble, decompile or design around disclosing party's proprietary services, products and/or confidential intellectual property; (c) not disclose any such Confidential Information to any person or entity, other than to receiving party's employees who: (i) need to know the Confidential Information to assist receiving party, or act on its behalf, in relation to the Purpose, (i) are informed in writing by receiving party of the confidential nature of the Confidential Information, and (iii) are subject to confidentiality duties or obligations to disclosing party that are no less restrictive than the terms and conditions of this NDA; (d) not disclose any Confidential Information to any third parties or non-employees and must not be disclosed or used outside receiving party's business premises; and (e) comply with all applicable on-site access, remote access and related security rules and procedures



of disclosing party. Notwithstanding the foregoing, the receiving party is and remains liable and responsible for the obligations of its directors, officers, employees, and agents.

5. The obligations of confidentiality and limitations of use continue beyond the termination of this NDA; provided, however, the receiving party will not be liable for any disclosure of Confidential Information or further restriction on use where the same information:

- a. was in the public domain at the time it was disclosed or later comes within the public domain, except through the acts or omissions of the receiving party and proof that the information was in the public domain is supported by sufficient independent documentary evidence;
- b. was known to the receiving party at the time of its disclosure and this knowledge is supported by sufficient independent documentary evidence dated prior to receipt;
- c. is developed independently by the receiving party and any reference or access to the Confidential Information disclosed under this NDA and such development is supported by sufficient independent documentary evidence;
- d. is approved for the release by written authorization of the disclosing party;
- e. is required to be released pursuant to a request under the California Public Records Act;
- f. becomes known to receiving party from a source other than the disclosing party or any of its employees, without breach of this NDA and such knowledge is supported by sufficient independent documentary evidence dated prior to receipt;
- g. is disclosed to third parties by the disclosing party without restriction and such disclosure is supported by sufficient independent documentary evidence; or
- h. more than ten (10) years have elapsed from the date of disclosure of the Confidential Information to receiving party.

6. Upon termination of this NDA or upon the written request of the disclosing party at any time, the receiving party will immediately deliver to the disclosing party all of the disclosing party's Confidential Information, as well as, all documents, media, and items comprising or embodying such Confidential Information and any other documents or things belonging to the disclosing party that may be in the receiving party's possession. Receiving party agrees that it will make no copies of any Confidential Information received from disclosing party without disclosing party's prior written authorization. Except as required by law or regulation, receiving party will not retain any copies or notations from the Confidential Information, and will certify in writing to disclosing party that such copies have been destroyed.

7. Any disclosure by receiving party or its employees of any of the Confidential Information pursuant to applicable federal, state or local law or regulation, or a valid order issued by a court or governmental agency of competent jurisdiction ("Legal Order") is subject to the terms of this Section 7. Prior to making any such disclosure, the receiving party will make commercially reasonable efforts to provide disclosing party with (i) prompt written notice of such requirement so that disclosing party may seek a protective order or other remedy; and (ii) reasonable assistance in opposing such disclosure or seeking a protective order or other limitations on disclosure. If, after providing such notice and assistance as required herein, receiving party remains subject to a Legal Order to disclose any Confidential Information, receiving party may disclose, and, if applicable, may require its employees or other persons to whom such Legal Order is directed to disclose, no more than that portion of the Confidential Information which, on the advice of receiving party's legal counsel, such Legal Order specifically requires and shall use commercially reasonable efforts to obtain assurances from the applicable court or agency that such Confidential Information will be afforded confidential treatment.

8. The parties acknowledge that the Confidential Information may be controlled by the U.S. Department of Commerce Export Administration Regulations or other requirements of the U.S. Government regulating the export of the Confidential Information. The receiving party agrees that it will not attempt to, nor knowingly, export or re-export to any country without first having obtained all necessary approvals. Additionally, the parties acknowledge that granting non-U.S. citizens or non-permanent residents of the U.S. access to the Confidential Information can be considered a "deemed export," and the receiving party agrees to take proper and necessary action to restrict access to the Confidential Information only to U.S. citizens and permanent residents of the U.S.

9. Both parties agree that a breach of the obligations of this NDA is likely to cause irreparable harm to the disclosing party and that money damages would be inadequate as a remedy for a breach of such obligations. Therefore, each party agrees to not object to the disclosing party seeking injunctive relief in the event of such breach.


In the event the disclosing party seeks injunctive relief of any provision of this NDA, the receiving party agrees to waive and hereby does waive any requirement that the disclosing party post a bond or any other security. Each party agrees to indemnify the other party for any costs, losses, damages and expenses, including legal fees, suffered by the other party as a result of a breach of the other party's obligations in this NDA.

10. Both parties agree that this NDA and all disputes arising hereunder will be governed by the laws of the State of California without reference to conflict of laws principles. This NDA constitutes the complete agreement of the parties on the subject matter covered in this NDA and supercedes all prior or contemporaneous understandings, agreements, or representations, written or oral, of the parties. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. This NDA is binding upon the successors and assignees of each party. This NDA may not be amended except by a writing signed by both parties and expressly declared to be an amendment or modification of this NDA. In the event that any one or more of the provisions of this NDA is unenforceable, the enforceability of the remaining provisions shall be unimpaired.

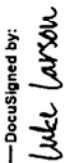
IN WITNESS WHEREOF, the Parties hereto have executed this MOU by persons duly authorized as of the effective date.

#### ACCEPTED AND AGREED:

#### CITY OF OXNARD

  
 Greg Nyhoff, City Manager  
4-12-17  
 Date


#### TASER International, Inc.

DocuSigned by:  
  
 3509270EA3B9C43D  
 Luke Larson, President  
3/28/2017  
 Date

#### APPROVED AS TO FORM:

  
 Stephen M. Fischer, City Attorney

#### TASER International, Inc.

  
 Douglas Klint, Executive Vice President, General Counsel and Corporate Secretary  
3.28.17  
 Date

#### APPROVED AS TO CONTENT:

  
 Scott Whitney, Chief of Police

#### APPROVED AS TO INSURANCE:

  
 Mike Meré, Risk Manager